

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DIAN POTTER
Claimant

VS.

K-MART CORPORATION
Respondent
Self-Insured

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Docket No. 125,604

ORDER

Respondent requested Appeals Board review of an Order entered by Administrative Law Judge Floyd D. Palmer dated July 17, 1996.

ISSUES

Respondent listed the following issues for Appeals Board review:

- (1) Whether the Administrative Law Judge exceeded his authority by granting claimant's request for an extension of her terminal date.
- (2) Whether the Administrative Law Judge exceeded his authority by granting claimant's request for an appointment of a physician to conduct an independent medical examination of claimant pursuant to K.S.A. 44-516.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the transcript of the motion hearing and considering the brief of the respondent, the Appeals Board finds as follows:

Before the Appeals Board can address the merits of this appeal, it must first determine whether it has jurisdiction to review the order at this juncture of the proceeding. This matter came before the Administrative Law Judge on the combined motion of the claimant to extend terminal dates and a request for an independent medical examination. The hearing was held on the combined motion before the Administrative Law Judge on July 2, 1996. Thereafter, the Administrative Law Judge entered the Order which is the subject of this appeal on July 17, 1996. The Administrative Law Judge, in that order, granted claimant's request for an extension of terminal dates and the appointment of a physician to conduct an independent medical

examination of the claimant pursuant to K.S.A. 44-516. Respondent argued that the Appeals Board has jurisdiction to review the order of the Administrative Law Judge pursuant to K.S.A. 44-551(b)(1), as amended, which provides in pertinent part as follows:

“All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days”

Respondent asserted that this statute does not limit Appeals Board review to final awards of compensation but clearly applies to all acts, findings, decisions, rulings, or modifications of findings as may be entered by an administrative law judge. Respondent further contended that the order entered by the Administrative Law Judge in the instant matter, is an act, finding, award, decision, or ruling of an Administrative Law Judge and is, therefore, reviewable by the Appeals Board.

The Appeals Board finds that the Order of the Administrative Law Judge is interlocutory in nature and made during the litigation of a workers compensation case. The Appeals Board finds that only final orders of an administrative law judge are subject to Appeals Board review as provided in K.S.A. 44-551(b)(1), as amended. The Appeals Board finds that it does have jurisdiction to review a preliminary hearing order pursuant to K.S.A. 44-534a, as amended, if the appeal raises an issue considered jurisdictional pursuant to that statute, preliminary hearings are limited to the furnishing of medical treatment and temporary total disability benefits pending the final hearing on the matter. However, the Appeals Board finds that all other orders entered by an administrative law judge, are required to be a final order as such orders are subject to judicial review pursuant to K.S.A. 1995 Supp. 44-556(a). That statute specifically requires that the order of the Appeals Board be a final order before judicial review is granted. The order now before the Appeals Board pertains to an interlocutory matter, not a final order, that the Administrative Law Judge has authority to adjudicate, if called upon, during the litigation of a workers compensation case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the application for review filed by the respondent, should be, and is hereby, dismissed as the Appeals Board does not have jurisdiction to review the Order.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Sally Kelsey, Lawrence, KS
Gregory D. Worth, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director